

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANGELA GENE CHOATE,	)	
	)	CASE NO. C12-0311-MAT
Plaintiff,	)	
	)	
v.	)	ORDER RE: SOCIAL SECURITY
	)	DISABILITY APPEAL
MICHAEL J. ASTRUE, Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Angela Gene Choate appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”) which denied her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XIV of the Social Security Act, 42 U.S.C. §§ 401-33 and 1381-83f, after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Commissioner’s decision is AFFIRMED.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff was born in 1978 and was 29 years old on the alleged disability onset date. (Administrative Record (“AR”) 26.) She completed high school and a two year degree in

01 Computer Animation. (AR 46-47.) Her past work experience includes employment as a  
02 cashier checker, deli clerk, flower salesperson, nurse assistant, sales clerk, and scanner  
03 operator. (AR 26, 64-65.)

04 In December 2008, plaintiff applied for DIB and SSI, alleging disability beginning April  
05 1, 2008. (AR 169-77.) She asserts she is disabled due to post traumatic stress disorder  
06 ("PTSD"), bipolar disorder, hearing loss, asthma, irritable bowel syndrome, and migraine  
07 headaches. (AR 217.)

08 The Commissioner denied plaintiff's applications initially and on reconsideration.  
09 (AR 75-78, 81-86.) Thereafter, plaintiff requested a hearing. (AR 87-88.) An initial  
10 hearing was held on October 13, 2010, but the hearing was continued to provide plaintiff time to  
11 obtain additional records. (AR 34-38.) On December 17, 2010, a supplemental hearing was  
12 held in Wenatchee, Washington. (AR 39-70.) On January 21, 2011, the ALJ issued a  
13 decision finding plaintiff not disabled. (AR 16-28.) The Appeals Council denied plaintiff's  
14 request for review (AR 1-6), making the ALJ's ruling the "final decision" of the Commissioner  
15 as that term is defined by 42 U.S.C. § 405(g). On February 23, 2012, plaintiff timely filed the  
16 present action challenging the Commissioner's decision. (Dkt. No. 2.)

## 17 II. JURISDICTION

18 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§  
19 405(g) and 1383(c)(3).

## 20 III. DISCUSSION

21 The Commissioner follows a five-step sequential evaluation process for determining  
22 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it

01 must be determined whether the claimant has engaged in substantial gainful activity. The ALJ  
02 found plaintiff had not engaged in substantial gainful activity since April 1, 2008, the alleged  
03 disability onset date. (AR 18.) At step two, it must be determined whether the claimant  
04 suffers from a severe impairment. The ALJ found plaintiff had the following severe  
05 impairments: PTSD, bipolar disorder, hearing loss, asthma, latex sensitivity, and obesity. *Id.*  
06 Step three asks whether the claimant's impairments meet or equal the criteria of a listed  
07 impairment. The ALJ found that plaintiff's impairments did not meet or equal the criteria of a  
08 listed impairment. (AR 19.) If the claimant's impairments do not meet or equal a listing, the  
09 Commissioner must assess residual functional capacity ("RFC") and determine at step four  
10 whether the claimant has demonstrated an inability to perform past relevant work. The ALJ  
11 found plaintiff had the ability to perform light work, except she can occasionally climb stairs  
12 and ramps, balance, kneel, and crawl; and she can never climb ladders, ropes, or scaffolds.  
13 (AR 21.) She should avoid unprotected heights, concentrated exposure to extreme cold, odors,  
14 dusts, gases, fumes, latex, loud noises, and concentrated exposure to hazards such as heavy  
15 machinery. *Id.* In addition, the ALJ found she can have occasional contact with the public  
16 and coworkers, but would need a low stress environment with no more than average production  
17 requirements. *Id.* With that assessment, the ALJ found plaintiff was able to perform her past  
18 work as scanner operator. (AR 26.)

19 If the claimant is able to perform her past relevant work, she is not disabled; if the  
20 opposite is true, then the burden shifts to the Commissioner at step five to show that the  
21 claimant can perform other work that exists in significant numbers in the national economy,  
22 taking into consideration the claimant's RFC, age, education, and work experience. Based on

01 the testimony of the vocational expert, the ALJ also found plaintiff is capable of making a  
02 successful adjustment to other work that exists in significant numbers in the national economy,  
03 and, therefore, was not disabled. (AR 26-27.)

04 Plaintiff argues that the ALJ erred by failing to include any limitations attributable to  
05 her migraine headaches in the RFC assessment, and by failing to properly evaluate the medical  
06 evidence related to her mental impairments. (Dkt. No. 16.) She requests remand for an award  
07 of benefits or, in the alternative, for further administrative proceedings. *Id.* at 9. The  
08 Commissioner argues that the ALJ's decision is supported by substantial evidence, and should  
09 be affirmed. (Dkt. No. 17.)

10 A. The ALJ's Consideration of Plaintiff's Migraine Headaches

11 Plaintiff argues that the ALJ erred in assessing her RFC by failing to include any  
12 limitations relating to her "significant history of migraine headaches." (Dkt. No. 16 at 3.)  
13 Plaintiff does not challenge the ALJ's finding that she is able to perform light work with  
14 additional environmental limitations, but contends that she is not capable of any exertional  
15 capacity during migraine headache episodes. *Id.* at 4. Aside from this assertion, plaintiff  
16 provides no argument in support of this claim.

17 The Court need not address an alleged error that is not argued with any specificity in the  
18 party's briefing. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n. 2 (9th Cir.  
19 2008). Moreover, the ALJ specifically addressed plaintiff's migraine headaches, finding as  
20 follows:

21 In 2007 and 2008, the claimant was complaining of migraine headaches every one  
22 to two weeks; however, there is evidence of record indicating she was not paying  
attention to migraine triggers in that she was drinking too much caffeine

(approximately six sodas per day) and not getting enough sleep. In addition, in April 2009, it was stated the claimant's migraine headaches were under control with Atenolol and she had not had a migraine headache since January 2009. She did not report having headaches again until December 2009 and October 2010, which suggests, contrary to her testimony, her migraines have been under control since early 2009 (Exhibits 1F [AR 257-98], 2F [299-349], 5F [376-95], 9F [459-500], 17F [559-63], 29F [784-88]).

(AR 24.) Fundamentally, plaintiff asks for a different weighing of the evidence from that conducted by the ALJ. However, the findings of the Commissioner, if supported by substantial evidence, "shall be conclusive." *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). The ALJ's finding that plaintiff's migraine headaches are controlled by medication is supported by substantial evidence, as plaintiff and her treating physicians made the observations the ALJ relies upon. *See Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that can be controlled effectively with medication are not disabling . . ."). Plaintiff has not established error in the ALJ's consideration of her migraine headaches.

#### B. The ALJ's Evaluation of Plaintiff's Mental Impairments

Plaintiff also argues that the ALJ erred in the assessment of her mental limitations. (Dkt. No. 16 at 5.) She contends that the opinions of Caitlin Newman, M.S., and Crystal Coffey, Pharm. D., show she has more significant mental limitations than the ALJ found.

In evaluating the weight to be given to the opinions of medical providers, Social Security regulations distinguish between "acceptable medical sources" and "other sources." Acceptable medical sources include, for example, licensed physicians and psychologists, while other non-specified medical providers are considered "other sources." 20 C.F.R. §§ 404.1513(a), (e), 416.913(a), (e); Social Security Ruling ("SSR") 06-03p.

01 In general, more weight should be given to the opinion of a treating physician than to a  
02 non-treating physician, and more weight to the opinion of an examining physician than to a  
03 non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not  
04 contradicted by another physician, a treating or examining physician's opinion may be rejected  
05 only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391,  
06 1396 (9th Cir. 1991)). Where contradicted, a treating or examining physician's opinion may  
07 not be rejected without "specific and legitimate reasons" supported by substantial evidence in  
08 the record for so doing." *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.  
09 1983)). An ALJ does this "by setting out a detailed and thorough summary of the facts and  
10 conflicting clinical evidence, stating his interpretation thereof, and making findings." *Reddick*  
11 *v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751  
12 (9th Cir. 1989)). Rather than merely stating his conclusions, the ALJ "must set forth his own  
13 interpretations and explain why they, rather than the doctors', are correct." *Id.* (citing *Embrey*  
14 *v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

15 Less weight may be assigned to the opinions of other sources. *Gomez v. Chater*, 74  
16 F.3d 967, 970-71 (9th Cir. 1996). However, "[s]ince there is a requirement to consider all  
17 relevant evidence in an individual's case record," the ALJ's decision "should reflect the  
18 consideration of opinions from medical sources who are not 'acceptable medical sources' and  
19 from 'non-medical sources' who have seen the claimant in their professional capacity." SSR  
20 06-03p. "[T]he adjudicator generally should explain the weight given to opinions from these  
21 'other sources,' or otherwise ensure that the discussion of the evidence in the determination or  
22 decision allows a claimant or subsequent reviewer to follow the adjudicator's reasoning, when

01 such opinions may have an effect on the outcome of the case.” *Id.*; *see also Smolen*, 80 F.3d at  
02 1288-89 (ALJ must provide germane reasons as to lay testimony).

03 *1. Caitlin Newman, M.S.*

04 Ms. Newman completed three psychological evaluations for the Washington State  
05 Department of Social and Health Services (“DSHS”) on May 19, 2008, November 10, 2008,  
06 and October 19, 2009. (AR 367-71, 399-403, 656-67.) Ms. Newman diagnosed plaintiff with  
07 PTSD and bipolar disorder, and opined that she had predominantly marked cognitive and social  
08 limitations. *Id.*

09 The ALJ gave little weight to Ms. Newman’s opinions that plaintiff had marked  
10 cognitive and social limitations for several reasons. First, the ALJ rejected her opinions  
11 because they were based primarily on plaintiff’s self-reports, which the ALJ discounted as not  
12 credible. (AR 25.) An ALJ may reject a physician’s opinion if it is based on a claimant’s  
13 self-reports that have been properly discounted as incredible. *Tonapetyan v. Halter*, 242 F.3d  
14 144, 1149 (9th Cir. 2001); *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.  
15 1999) (citing *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989)). A review of Ms. Newman’s  
16 evaluations reveals that they were largely premised on plaintiff’s subjective complaints, with  
17 little independent analysis or diagnosis. (AR 22.) Plaintiff did not challenge the ALJ’s  
18 credibility finding, and thus has waived this argument. *See Greger v. Barnhart*, 464 F.3d 968,  
19 973 (9th Cir. 2006).

20 Second, the ALJ rejected Ms. Newman’s opinions on the grounds that Ms. Newman  
21 was an examining mental health professional and her opinions were contradicted by the opinion  
22 of plaintiff’s treating mental health professional Michael Haley, ARNP. (AR 25.) As the

01 ALJ noted, Mr. Haley assigned plaintiff a global assessment of functioning (“GAF”)<sup>1</sup> score of  
02 60, stating that “[s]he has some moderate symptoms, generally functioning, but with some  
03 difficulty.” (AR 364.) The ALJ properly considered and accorded greater weight to the  
04 opinion of Mr. Haley’s under 20 C.F.R. §§ 404.1527 and 416.927, and against the opinion of  
05 Ms. Newman, an examining, nontreating source.

06 Third, the ALJ rejected Ms. Newman’s opinions because they were inconsistent with  
07 the results of the mental status examination (29 out of 30), which the ALJ found did not suggest  
08 plaintiff had marked limitations in cognitive functioning. (AR 25.) The ALJ further noted  
09 that Ms. Newman did not conduct any clinical testing to support her assessment of marked  
10 limitations, which the ALJ found was inconsistent with plaintiff’s treatment records as a whole.  
11 *Id.* Inconsistency with the medical evidence is a germane reason for rejecting the evidence.  
12 *See Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005).

13 As indicated above, the ALJ may discount the opinion of a non-acceptable medical  
14 source by providing reasons that are germane to that source. *Dodrill v. Shalala*, 12 F.3d 915,  
15 919 (9th Cir. 1993). The ALJ provided several germane reasons for giving little weight to Ms.  
16 Newman’s opinions regarding plaintiff’s mental health functioning. The ALJ did not err.

17 2. *Crystal Coffey, Pharm. D.*

18 Ms. Coffey conducted a psychiatric evaluation and provided medication management  
19 between November 3, 2010, and December 7, 2010. (AR 795-802.) She diagnosed plaintiff  
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21 1 The GAF score is a subjective determination based on a scale of 1 to 100 of “the  
22 clinician’s judgment of the individual’s overall level of functioning.” American Psychiatric  
Ass’n, Diagnostic and Statistical Manual of Mental Disorders 32-34 (4th ed. 2000).



01 with PTSD, bipolar disorder, and alcohol abuse, and assigned her a GAF score of 55, indicating  
02 moderate symptoms or moderate difficulty in social or occupational functioning. DSM-IV at  
03 34. However, the ALJ gave little weight to the GAF score of 55 provided by Ms. Coffey,  
04 finding it was not supported by plaintiff's treatment history and was based primarily on  
05 plaintiff's self-report. (AR 26.)

06 As indicated above, an ALJ may reject a physician's opinion if it is based on a  
07 claimant's self-reports that have been properly discounted as incredible. *Tonapetyan*, 242  
08 F.3d at 1149; *Morgan*, 169 F.3d at 602. Ms. Coffey's records indicate her opinion was based  
09 primarily on plaintiff's subjective complaints, which the ALJ properly discounted as not  
10 credible. In addition, the ALJ found no evidence in the record that plaintiff's symptoms had  
11 worsened since Mr. Haley assessed a GAF of 60, finding that plaintiff had "some moderate  
12 symptoms, generally functioning, but with some difficulty." (AR 26, 364.) The ALJ also  
13 noted that Ms. Coffey had a degree as a Doctor of Pharmacy, and there was no evidence in the  
14 record that she had any educational background in psychology. (AR 26.) As such, her  
15 opinion must be given the weight of lay testimony.<sup>2</sup> The ALJ provided sufficient reasons to  
16 discount Ms. Coffey's opinion under SSR 06-03p. Accordingly, this claim does not require  
17 reversal.

18 Plaintiff argues that there is no conflict between the assessments of Mr. Haley, Ms.

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20 <sup>2</sup> Plaintiff asserts that Ms. Coffey is a psychiatrist with a medical degree. (Dkt. No. 16  
21 at 8.) Contrary to plaintiff's assertion, the record reflects that Ms. Coffey has a Doctor of  
22 Pharmacy, and thus is neither a doctor nor a psychiatrist. As a pharmacist, Ms. Coffey is not  
an "acceptable medical source" as defined in the Social Security regulations. *See* 20 C.F.R. §§  
404.1513(d), 416.913(d). The ALJ could, therefore, discount her opinion by providing  
germane reasons. *Dodrill*, 12 F.3d at 919.

01 Newman, and Ms. Coffey, and that “all of the providers portray the plaintiff as having a severe  
02 mental impairment.” (Dkt. No. 16 at 8.) As the Commissioner points out, however, the ALJ  
03 found plaintiff’s PTSD and bipolar disorder to be severe. Furthermore, the ALJ properly  
04 incorporated all of plaintiff’s limitations and restrictions she found credible and supported by  
05 substantial evidence into the RFC assessment, limiting her to occasional contact with the public  
06 and coworkers, and a low stress environment with no more than average production  
07 requirements. (AR 21.) Plaintiff does not indicate what additional limitations, if any, could  
08 be attributed to Ms. Coffey.

09 Plaintiff essentially argues for a different weighing of the evidence. However, the role  
10 of this Court is limited. As noted above, it is the duty of the ALJ to resolve conflicts in medical  
11 testimony and other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
12 Cir. 1995). When the evidence is susceptible to more than one rational interpretation, it is the  
13 Commissioner’s conclusion that must be upheld. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th  
14 Cir. 2002). While it is perhaps possible to construe the medical evidence as urged by plaintiff,  
15 it is not possible to conclude that her interpretation is the only rational interpretation. The  
16 Court finds that the reasons given by the ALJ to discount Ms. Coffey’s opinion were germane  
17 and supported by substantial evidence in the record. The ALJ did not err in her assessment of  
18 Dr. Coffey’s opinion.

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IV. CONCLUSION

For the foregoing reasons, the Commissioner's decision is AFFIRMED.

DATED this 7th day of August, 2012.

A handwritten signature in black ink, appearing to read "Mary Alice Theiler", written over a horizontal line.

Mary Alice Theiler  
United States Magistrate Judge